

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DOROTHY C. ROWE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-417
Case No. 79-6736

S.S.A. No.

SAN LORENZO UNIFIED SCHOOL DISTRICT
C/o The Gibbens Co., Inc.

Employer Account No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. OAK-4P-1919

The employer and the Department appealed from the decision of the administrative law judge which held that the claimant was eligible for benefits under section 1253.3 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant has been a classified employee of the employer school district for 18 years. In recent years she has been an account clerk.

Until 1978 the claimant had always worked as a 12-month employee. By letter dated August 9, 1978 the employer informed the claimant that effective September 9, 1978 the claimant's work year would be reduced to 10 months "due to lack of work and/or lack of funds." The letter also stated: "The law requires that you be given a 30-day notice prior to changing your position to 'school year' basis." The letter notifying the claimant of the change informed her that her work year would go from five days before the start of school until ten work-days after the close of school.

The claimant had customarily worked during each summer recess until 1979. In 1979, as the result of her reduction to 10-month status, the claimant ceased work

on June 29, 1979. At that time she was aware that she would be returning to work on August 30, 1979, and the claimant did in fact return to work on that date.

The claimant worked under this new arrangement during the school holidays at Christmas and Easter. She is required to take her vacation at the end of her work year. When she was employed on a 12-month basis she received 20 days vacation pay; however, because of her 10-month status her vacation pay has been reduced proportionately. She currently earns \$848 per month.

REASONS FOR DECISION

Section 1253.3 of the Unemployment Insurance Code provides in pertinent part as follows:

"(a) Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable on the basis of service to which Section 3309(a)(1) of the Internal Revenue Code of 1954 applies, in the same amount, on the same terms, and subject to the same conditions as such benefits payable on the basis of other service subject to this division, except as provided by this section.

"(b) Benefits specified by subdivision (a) of this section based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution shall not be payable to any individual with respect to any week which begins during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular but not successive terms, during such period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

"(c) Benefits specified by subdivision (a) of this section based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in any other capacity than specified in subdivision (b) for an educational institution (other than an institution of higher education) shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms if such individual performs such service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such service in the second of such academic years or terms."

* * *

"(f) For purposes of this section, to the extent permitted by federal law, 'reasonable assurance' includes, but is not limited to, an offer of employment made by the educational institution, provided, that such offer is not contingent on enrollment, funding, or program changes."

Sections 1253.3(b) and (c) were patterned after section 3304(a)(6)(A), clauses (i) and (ii) of the Federal Unemployment Tax Act, as enacted by Public Law 94-566.

Review of the congressional debates on Public Law 94-566 and earlier legislation satisfies us that the intent of Congress in enacting such legislation was to deny benefits to those school employees who are normally off work during summer recess or summer vacation periods. However, it was not the intent of Congress to deny benefits to year-round employees or those regularly scheduled for summer work who, due to the cancellation of normal or scheduled summer work, became unemployed. (Congressional Record, September 29, 1976, Vol. 149, Part II, H11615-6.) (See also Congressional Records, September 29, 1976, Vol. 122, No. 149, S17013-4; September 29, 1976, Vol. 122, No. 149, S17022-3; October 1, 1976, Vol. 151, Part II, H12172.)

In this respect, the intent of Congress has been followed and applied in numerous cases arising out of

cancellation of 1978 summer sessions following passage of Proposition 13 and the concomitant reduction of funds available to school districts. During the summer of 1978, the Employment Development Department and the United States Department of Labor reevaluated the applicability of section 1253.3 to professional and non-professional school employees who were scheduled to teach or work during the 1978 summer school session. It was concluded, after an analysis of the Congressional Record, that it was not the intent of Congress to deny benefits to those scheduled for summer work who became unemployed due to cancellation of the summer session.

We believe that similar reasoning must be followed in the instant case. The claimant was essentially a full-time employee who was reduced to a 10-month employee. Prior to this reduction, she could reasonably anticipate that she would continue her usual pattern of year-round work. When she was reduced to a 10-month employee she was in effect laid off from her normal year-round work and suffered a wage loss. It is clear that the cause of her unemployment was not a normal summer recess or vacation period but the loss of customary summer work. The period commencing immediately after her last day of work on June 29, 1979, is not a "customary vacation period" for this claimant. The claimant has always worked during this period and has been forced to cease work due to a mandatory layoff caused by funding problems, unlike actual "school year" employees (such as tenured teachers). This claimant works during the Christmas and Easter holidays -- periods that are customary vacation period or "holiday recesses" for teachers. The effect of the reduction of the claimant's work year was to cause her to become laid off. She is involuntarily unemployed through no fault of her own, and the provisions of Section 1253.3 of the Code do not apply in her case. To equate this claimant with those who normally do not work during summer recess periods would contravene the policy set forth in section 100 of the Unemployment Insurance Code that benefits are to be provided to those unemployed through no fault of their own.

We therefore conclude that the claimant is not ineligible under section 1253.3 of the Unemployment Insurance Code beginning July 1, 1979.

In view of this conclusion, the Department may wish to consider the claimant's eligibility under section 1252 of the code with respect to her receipt of vacation pay.

DECISION

The decision of the administrative law judge is affirmed. The claimant is not ineligible under section 1253.3 of the code beginning July 1, 1979. The matter of the claimant's eligibility under section 1252 of the code is referred to the Department.

Sacramento, California, January 6, 1981.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

HERBERT RHODES - Not Voting

LORETTA A. WALKER

RAFAEL A. ARREOLA

DISSENTING -

Written Opinion Attached:

MARILYN H. GRACE

DISSENTING OPINION

I dissent.

I cannot agree that the claimant is entitled to benefits. In Appeals Board Decision No. P-B-412 this Board considered the case of an assistant professor who was reduced from an 11.5-month employee to a 10-month employee. He received notification of this action shortly before the summer of 1979, a period during which he had expected to be working as he had in the past. We held that the claimant was not ineligible under section 1253.3 in that he was in effect laid off from reasonably anticipated and customary summer work.

The present case, however, is entirely different. In the instant case the claimant's change of status occurred 10 months prior to the 1979 summer recess. The claimant knew, during the entire 1978-79 school year, that she was a 10-month employee, and she accepted employment during that school year on that basis. The claimant was not laid off during or shortly before the 1979 summer recess. She did not lose reasonably anticipated summer work. Since she had reasonable assurance that her services would be utilized during the 1979-80 academic year, she should be held ineligible for benefits under section 1253.3 of the code.

Under the reasoning of the majority opinion, the claimant is provided with an argument that she should be eligible for benefits during summer recesses in the indefinite future. If this comes to pass, it will become apparent to all, as it is to me, that the majority has engaged in quasi-judicial legislation.

For these reasons, I would reverse the decision of the administrative law judge and hold the claimant ineligible under section 1253.3 of the code.

MARILYN H. GRACE